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Section Activities

## A LETTER FROM THE CHAIR

John B. McNeece III

I wish all the members of the International Law Section and their families a happy, healthy and prosperous 2002. We as international lawyers have much to contribute as the world navigates its many difficulties.

The Executive Committee of the ILS has spent time over the past several months working on ways to make your Section more helpful to you in the practice of international law. One of our first steps is to reinvigorate the ILS Newsletter, which you are now reading. For those of you who have provided e-mail addresses to the State Bar, we will be sending the Newsletter by e-mail. This will be responsive to many of our members who rely heavily on their PCs, and will also make our information much more timely. Where we do not have e-mail addresses, we will continue to mail the Newsletter. Many thanks to David Hirson and Catherine Mayou at the law firm of Hirson, Wexler, Perl for their substantial assistance in editing and assembling the Newsletter.

The ILS has a number of interesting programs that we will be presenting, or co-sponsoring, over the next few months. Many more programs – in both public and private international law – are in the planning stage.

This coming Friday and Saturday, January 18-19, the ILS will have two important programs at the State Bar's Winter Education Institute in San Diego, at the Westin Horton Plaza Hotel. The first program is on the timely topic "International Law in a Post-September 11 World" (Friday, January 18, 9:45-11:45 a.m.). The second program is on "International Law: You Need Immigration Advice" (Saturday, January 19, 1:45-3:45 p.m.). Both programs will be substantive and valuable.

On Friday, February 8, the ILS is sponsoring a major all-day conference on "Winning International Strategies for Technology-Based Companies: Integrating Intellectual Property and Corporate Planning" at the San Diego Marriott Del Mar in San Diego's Carmel Valley. Tech companies are increasingly focused on international opportunities, and this program will show how to capitalize on those opportunities. The keynote speaker will be Robert L. Stoll, the senior international official at the USPTO in Washington, D.C., who will speak on "International Protection of Intellectual Property." Another featured speaker is A. Douglas Melamed, with Wilmer, Cutler & Pickering in Washington DC, speaking on "International Antitrust Strategy." Doug was a key strategist for the U.S. Department of Justice in the Microsoft antitrust case. For further information, see the program brochure at <a href="http://www.calbar.ca.gov/calbar/pdfs/sections/ils/2002-02-08\_weekend.pdf">http://www.calbar.ca.gov/calbar/pdfs/sections/ils/2002-02-08\_weekend.pdf</a>.

The ILS is cosponsoring, with the ABA Section of International Law & Practice, a strong program on "Export Controls: Emerging Trends and Compliance Challenges," to be held on January 28, 2002 at the Marriott Fisherman's Wharf, San Francisco. New export control rules have just come out, and this will be an up-to-the minute program, with many of the leading government officials and practitioners in the field. For further information, see www.calbar.org/ils/ #export. ILS Vice-Chair David Teichmann played a key role in organizing this program.

The ILS has just published its current issue of the California International Practitioner, under the leadership of Editor-in-Chief Brian Krantz. This issue is particularly strong, with articles on International Digital Disputes, US Trade Law Remedies, Enforcement of Antibribery Conventions, and PRC Insolvency law. In the future, we will continue our policy of providing topics of broad interest to international practitioners, with selected articles on key laws in specific jurisdictions.

As you can see, the ILS Executive Committee has been busy working to make your Section timely, interesting, and useful. We hope you will continue as a participant in the Section, and renew your ILS membership when you respond to the State Bar's annual dues letter.

Also, I hope many of you will consider applying for a position on the Executive Committee for the coming year (September 2002-September 2003). We have a good group of Members and Advisors on the Committee. It is a congenial and productive group. Among other things, we have a good time together. Applications are due by February 1, 2002. Application forms are on the Bar website at <a href="https://www.calbar.org/comcom/">www.calbar.org/comcom/</a>.

Following the events of September 11, international law will continue to play a key role in ordering international affairs. The US made it a point to assert the right of self-defense under Article 51 of the United Nations Charter to justify its armed response against al-Qaeda and the Taliban in Afghanistan. The UN itself is now playing a key role in rebuilding of Afghanistan. The UN sponsored the talks in Germany among four Afghan factions that lead to the appointment of Hamid Karzai as the interim administrator for the transitional government in Afghanistan, and the UN also assisted with the recent accord to establish an international peacekeeping force in Kabul. But as we read about the chaos in other Afghan cities, the refugees, the starvation, and the stories of the Afghan warlords who are back to their old ways of corruption, theft, and self-aggrandizement, it is clear that the process is just beginning. Mr. Karzai and the interim Afghan government will not be able to give the Afghan people hope for security, sufficient food on the table, and a decent life without support from international organizations and the international community, acting within the framework of international treaties and agreements.

Many of the members of the ILS act within the sphere of private international law, particularly with regard to international business transactions or resolution of private international disputes. Although we may not think in these terms, this is part of the process of globalization, which has come under increasing challenge. One element of the challenge, as stated by union leader Jay Mazur, is that "globalization has dramatically increased inequality between and among nations" (*Foreign Affairs*, "Labor's New Internationalism," January/February 2000). However, a current Foreign Affairs article by two World Bank economists, David Dollar and Art Kraay, argues that "the best evidence available argues that exactly the opposite is true. They argue that global trade and investment have "helped narrow the gap between rich and poor countries rather widen it." On the issue of internal inequality, Dollar and Kraay suggest that "shifts in inequality stem more from domestic education, taxes and social policy," than from globalization measures such as trade and investment flows, tariff rates and the presence of capital controls. (Foreign Affairs, "Spreading the Wealth," January/ February 2002). I commend this article to you as an interesting commentary that will advance the debate.



## LEGISLATIVE UPDATE

Catherine I. Mayou, Esq. Member of the Executive Committee

### Antiterrorism Legislation is Enacted – The USA PATRIOT Act of 2001

On October 26, President Bush signed the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Pub. K. No. 107-56, 115 Stat. 272 into law, thereby introducing sweeping changes to our immigration laws and providing a means to end the financing of terrorist organizations and other financial crimes.

The USA PATRIOT Act ("The Act") provides new definitions relating to terrorism in that it:

- Provides new authority to Secretary of State to designate any group, foreign or domestic, as a terrorist
  organization, upon publication in the Federal Register which authority is not subject to review;
- Makes any fundraising, solicitation for membership, or material support (even for humanitarian projects)
  of groups that are designated terrorist organizations by the Secretary of State, a deportable offense
  within the context of U.S. immigration law (without regard to whether such activities were in furtherance
  of actual terrorist activity);
- Makes solicitation of funds or other material support for groups NOT officially designated as "terrorist organizations" a deportable offense unless the person can prove that he "did not know, and should not reasonably have known, that the solicitation would further the organizations' terrorist activity; ..."
- Adds new grounds of inadmissibility for U.S. immigration purposes for representatives of foreign terrorist
  organizations or any group that publicly endorses acts of terrorist activity, and spouses and children of
  aliens who are inadmissible on any of the terrorism-related grounds;
- Provides certain limits on retroactivity in cases where a person previously provided material support to the humanitarian projects of a terrorist organization before it was designated as such by the Secretary of State.

Some of the other pertinent immigration-related provisions of the Act are summarized below:

The Act authorizes the mandatory detention of aliens certified as terrorists by the Attorney General or the Deputy Attorney General if there are reasonable grounds to believe that the alien is a terrorist or has committed a terrorist activity. The Act also enables the Immigration and Naturalization Service to detain a suspected terrorist alien for 7 days before bringing immigration or criminal charges against the person detained. The Attorney General is required to review the certification of any person so detained every 6 months and if, in the Attorney General's discretion, it is determined that the certification should be revoked the person may be

released.

Any certified person may request a reconsideration of their certification every six months and submit documents or evidence to support that request. The Attorney General is required to submit a report to Congress on the use of this mandatory detention section every six months.

The Act furthermore provides that State Department records can be provided to a foreign government on a case-by-case basis for the purpose of preventing, investigating, or punishing acts of terrorism. Under current law, the records of the State Department pertaining to the issuance of or refusal to issue visas to enter the U.S. are confidential and can be used only in the formulation and enforcement of U. S. law.

In addition, that Act directs that all countries designated to participate in the Visa Waiver Program must now satisfy the requirement of issuing machine-readable passports by October 1, 2003, instead of 2007.

The Act provides "special immigrant status" to any alien whose family or employment based immigrant petition, fiancé(e) visa, or application for labor certification was revoked or terminated (or otherwise rendered null) due to the death, disability or loss of employment (due to the physical damage or destruction of the business) of the petitioner, applicant, or beneficiary as a direct result of the terrorist attacks. The relief is also available to the spouses and children who were either accompanying the principal applicant, or who are following to join the principal applicant up to two years later (September 11, 2003).

Furthermore, under this humanitarian provision:

- The grandparents of any child whose parents died in the attacks may also qualify for this status, if either
  of the parents were U.S. citizens or legal permanent residents.
- In determining eligibility for an immigrant visa, the public charge grounds of inadmissibility shall not apply to these special immigrants

However, no benefit under this provision shall be provided to anyone culpable for the terrorist attacks on September 11 or to any family member of such an individual.

The Act includes extensive provisions related to international financial transactions in the aftermath of September 11.

- The Act renders any person who a consular officer or the Attorney General knows, or has reason to believe, has engaged, is engaging, or will engage in an offense relating to money laundering "inadmissible" for U.S. immigration purposes.
- •Requires the Secretary of State to establish, within 90 days, a watch list that identifies individuals worldwide who are known or suspected of money laundering, which is readily accessible to, and shall be checked by, a consular or other Federal official prior to the issuance of a visa or admission to the United States Some of the other pertinent financial aspects of the Act include an amendment to the Federal law governing monetary transactions and Federal criminal law, which establishes the act of attempting to knowingly conceal and transfer sums in excess of \$10,000 across U.S. borders in an effort to evade reporting requirements as a criminal offense. Also included under the offense is the falsification of client details when opening an account with a financial institution or carrying out a transaction.

The Act provides a mechanism for the speedy reporting of suspicious transactions by financial institutions through the establishment of the Financial Crimes Enforcement Network, a bureau within the Department of Treasury, which directs the Secretary of the Treasury to create a highly secure web site for this purpose.

Included within the Act, is a section relating to special measures for jurisdictions, financial institutions or international transactions which are considered of primary money laundering concern and provides for due diligence procedures and anti-money laundering programs. The Secretary of Treasury is also granted the power to carry out international negotiations in the pursuit of money laundering in furthering the provisions of the Act.



## **SECTION ACTIVITIES**

**REMEMBER**: ExComm Applications are due **February 1, 2002.** Download application at **Appointments Application 2002-2003**.

### January 28

"Export Controls: Emerging Trends and Compliance Challenges" Sponsored by the ABA, ACCA and ILS For more details go to <a href="https://www.calbar.org/ils">www.calbar.org/ils</a>

#### February 8

International Law Weekend, San Diego Marriott, Del Mar <a href="http://www.calbar.ca.gov/calbar/pdfs/sections/ils/2002-02-08\_weekend.pdf">http://www.calbar.ca.gov/calbar/pdfs/sections/ils/2002-02-08\_weekend.pdf</a>

### Feburary 9

Executive Committee Meeting at the offices of Luce, Forward, Hamilton & Scripps, Carmel Valley, San Diego



# OTHER ACTIVITIES OF INTEREST

## January 18-22

State Bar Section Education Institute Westin Horton Plaza Hotel, San Diego www.calbar.org/sections/index.htm

### February 7-10

The Wiener Juristengesprache, Austria.

"Current Issues of European and Business Law" sponsored by the firm of Haarmann Hemmelrath Hugel, including the Juristenball, a highlight of the Vienna Ball Season on February 9th

#### May 3-6

IPBA Annual Conference, Hong Kong InterPacific Bar Association www.ipba.org